87-572 (1)

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No. _____

Supreme Court, U.S.
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CLERK

IN THE

Supreme Court of the United States

October Term, 1987

STATE OF FLORIDA, AND STATE OF FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Petitioners,

v.

OSWALD COLEMAN and JESSIE WILLIAMS, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL, FIFTH DISTRICT

ROBERT A. BUTTERWORTH
Attorney General
RICHARD B. MARTELL
Assistant Attorney General
4th Floor 125 N. Ridgewood Ave.
Daytona Beach, FL 32014
Counsel of Record/State of Fl.

ENOCH J. WHITNEY
General Counsel
Counsel of Record/DHSMV
R. W. EVANS
Assistant General Counsel
Neil Kirkman Bldg. Room A-432
Tallahassee, FL 32399-0504
Counsel for Petitioner/DHSMV
Telephone: 904/488-1606

October 6, 1987

50 pp

QUESTION PRESENTED

Whether this Court should grant certiorari to review the decision below of a Florida district court of appeal when the appellate court has misapplied precedent of this Court by holding that facts observed by an experienced trooper of the Florida Highway Patrol which fell within a drug courier profile did not give rise to a reasonable suspicion of criminal activity to support a vehicle stop under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); whether this issue presents a question of such great public importance that this Court should grant review.

LIST OF PARTIES

The parties to the proceedings below were the petitioner Department of Highway Safety and Motor Vehicles and the respondents Oswald Coleman and Jessie Williams. The State of Florida, through the Attorney General, joins the Department as a party to this petition. Oswald Coleman and Jessie Williams remain as respondents before this Court.

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

STATE OF FLORIDA, AND STATE OF FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Petitioners,

v.

OSWALD COLEMAN and JESSIE WILLIAMS, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL, FIFTH DISTRICT

The petitioners, State of Florida, and State of Florida Department of Highway Safety and Motor Vehicles (Department), respectfully pray that a writ of certiorari issue to review the judgment and opinion of the District Court of Appeal for the Fifth District, State of Florida, entered in the above-entitled proceeding on April 16, 1987.

OPINIONS BELOW

The opinion of the Florida District Court of Appeal, Fifth District, IN RE: Forfeiture of $6,003 in United States Currency; Department of Highway Safety and Motor Vehicles v. Coleman and Williams, is reported at 505 So.2d 668 (Fla. 5th DCA 1987). It is printed in the appendix at pages A 1-5, infra.

The memorandum decision of the Florida Supreme Court denying review of the opinion of the Fifth District Court of Appeal has not been reported. It is printed in the appendix at pages A 6-7, infra.

JURISDICTION

On April 16, 1987, the Florida District Court of Appeal, Fifth District, entered a decision directing the Department of Highway Safety and Motor Vehicles to return currency seized by troopers of the Florida Highway Patrol, holding that the initial stop of respondents' vehicle violated the respondents' fourth amendment rights. No petition for rehearing was filed. The Florida Supreme Court denied the Department's petition for review on July 24, 1987. No petition for rehearing was filed by the Department.

Jurisdiction of this Court to review the judgment of the Fifth District Court of Appeal is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

On July 8, 1985, Trooper Robert L. Vogel, Jr., of the Florida Highway Patrol, a division of the Department, was conducting stationary surveillance of traffic from the median of Interstate 95 (I-95), in the vicinity of Daytona

Beach, Florida. At 9:35 p.m., Trooper Vogel observed the respondents' vehicle traveling north at approximately 45 miles per hour. (Transcript of Proceedings (TP) of February 5, 1985, pages 15-18)

The vehicle was a 1985, four-door Chevrolet, which displayed Florida rental tags. The driver appeared to the trooper to be a black male, 35 years of age, who was accompanied by at least one other person in the car. As the Chevrolet passed by the trooper, the driver did not look in the trooper's direction. After following the vehicle for approximately 1 1/2 miles at the same rate of speed, 45 miles per hour, the trooper activated his blue light to conduct a brief investigatory detention. (TP 18-19)

At the time of the vehicle stop, Trooper Vogel suspected that the vehicle and its occupants were transporting controlled substances. (TP 19) The trooper, a thirteen year veteran of the Florida Highway Patrol with extensive training and experience in drug enforcement, had developed a set of characteristics (a drug courier profile) common to 30 major drug cases that occurred during the time period of March, 1984, through April, 1985. (TP 12-17)

On July 8, 1985, Trooper Vogel detained the respondents' vehicle because the facts observed by the trooper fit the pattern of the drug courier profile. (TP 18-21) These facts, which were consistent with the

profile developed by Vogel, included: 1) a late model vehicle; 2) Florida rental tags; 3) two occupants observed initially in the vehicle; 4) the driver appeared to be male; 5) the driver appeared to be approximately 35 years of age; 6) the vehicle was traveling northbound on I-95, a route frequently used by drug couriers; 7) the vehicle was traveling in the evening in an extremely cautious manner at 45 miles per hour in a 55 mile per hour speed zone; 8) the driver did not look at the trooper as the respondents' vehicle passed the patrol car. (TP 18-22)

Upon approaching the vehicle, Trooper Vogel observed the vehicle to be occupied by three black males,

respondents Coleman and Williams, and their companion, Miller Hodges. In view of the extreme nervousness displayed by the occupants of the vehicle, and inconsistencies in the statements made to the trooper by respondent Coleman, the trooper requested consent from Coleman to search the vehicle.

After consent was given by Coleman, the trooper searched the trunk. In a brown tote bag, Trooper Vogel discovered $6,003 in United States currency, cocaine residue, two razor blades, a piece of white plastic, and a loaded .357 revolver. A .25 calibre automatic pistol and a brown paper bag containing one kilogram of cocaine were also found by a backup trooper on the roadside adjacent to the passenger door of the

respondents' vehicle. The troopers subsequently arrested Coleman, Hodges and Williams for trafficking in cocaine.

In separate cases, respondents Coleman and Williams petitioned for writ of replevin for return of the seized currency. The Department counterclaimed in Coleman's case for forfeiture of the currency. The trial court consolidated the separate cases on August 22, 1985. The Department, in response to the order consolidating the cases, filed an amended petition for rule to show cause and for final order of forfeiture. The trial court on December 23, 1985, entered a rule to show cause why property should not be forfeited.

Respondent Coleman filed a motion to suppress tangible evidence alleging that his fourth amendment rights were violated because the detention of Coleman and his passengers was not based upon a founded or reasonable suspicion of criminal activity. After hearing testimony and argument of counsel on February 5, 1986, the court granted the motion on the ground that the vehicle stop was not based upon a reasonable suspicion of criminal activity. (A 8-9) The Department moved to reconsider the court's order and respondent Coleman moved for entry of a final judgment. The court denied the motion for reconsideration and entered a final judgment on March 26, 1986, directing the Department to return the currency to the respondents.

On April 14, 1986, the Department timely filed a notice of appeal to the Fifth District Court of Appeal from the final judgment. The Department argued to the appellate court that the stop of the respondents' vehicle constituted a valid investigatory detention pursuant to Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and that the trial court erred by granting the motion to suppress. The Fifth District Court of Appeal held that the stop by the trooper of the respondents' vehicle constituted a violation of Article 1 §12 of the Constitution of the State of Florida and the fourth amendment to the United States Constitution. (A 4-5) Relying primarily upon United States v. Smith, 799 F.2d 704 (11th Cir. 1986),

the appellate court ruled that the facts observed by the trooper, which fell within the drug courier profile developed by the trooper, did not give rise to a reasonable suspicion of criminal activity. Id. The Fifth District Court of Appeal added that with time and more experience, an adequate, particularized profile may be established to identify drug couriers on Florida highways. Id.

On May 8, 1987, the Department timely filed a notice to invoke the discretionary jurisdiction of the Florida Supreme Court to review the opinion of the Fifth District Court of Appeal. Significantly, the respondent, Oswald Coleman, urged the Florida Supreme Court to invoke its

discretionary jurisdiction to review the case on the ground of sufficient public importance. On July 24, 1987, the Supreme Court of Florida declined to accept jurisdiction and ordered that the petition for review be denied. (A 6-7) This petition for writ of certiorari followed.

REASONS FOR GRANTING THE WRIT

I.

The decision of the Fifth District Court of Appeal, holding that the facts observed by Trooper Vogel which fell within a drug courier profile that he developed did not give rise to a reasonable, articulable suspicion of criminal activity conflicts with decisions of this Court and the Supreme Court of New Mexico.

Interstate 95 is well known to law enforcement agencies as a major drug artery in the state of Florida. For

Trooper Robert L. Vogel, Jr., a veteran officer of the Florida Highway Patrol stationed in Daytona Beach, Florida, the northbound route of I-95 has been the primary target of his drug interdiction efforts. In a 17 month period, Trooper Vogel made 50-60 major (felony) drug arrests; all these cases involved vehicles northbound on I-95. (TP 12) By extracting characteristics common to his drug arrests, Trooper Vogel has identified typical drug couriers who travel on I-95. As a result of the decision by the Fifth District Court of Appeal, this profile is useless unless the drug courier commits a traffic violation which would support probable cause for the vehicle stop.

Although the use of criminal profiles has been upheld by this Court, the Fifth District has rejected Trooper Vogel's profile, holding that the profile was too broad to give rise to a reasonable suspicion of criminal activity. (A 4-5) This case is reminiscent of Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) in that respect. As the Court may recall, the Florida District Court of Appeal, Third District, held that a drug courier profile employed by officers could not support an investigatory detention of Royer under Terry v. Ohio, supra. Royer v. State, 389 So.2d 1007 (Fla. 3rd DCA 1979). This Court disagreed with the Third District, holding that the facts

observed by the officers which fell within the drug courier profile gave the officers a reasonable suspicion that Royer was transporting controlled substances. 460 U.S. at 495, n. 7.

The petitioners also point to Florida v. Meyers, 466 U.S. 380, 104 S.Ct.1852, 80 L.Ed.2d 381 (1984) as precedent for review of a Florida District Court of Appeal decision which addresses an important fourth amendment issue. In Meyers, the Florida District Court of Appeal for the Fourth District held that a warrantless inventory search violated the fourth amendment. 432 So.2d 97. On certiorari, granted after the Florida Supreme Court denied review, this Court reversed the Fourth District commenting that "The Court of Appeal

either misunderstood or ignored our prior rulings...." 466 U.S. at 382. It should be apparent to the Court, upon review of its opinions concerning the use of the drug courier profile that the Fifth District has similarly misunderstood the Court's rulings.

Since the advent of Terry v. Ohio, supra, this Court has refined the concept of investigatory detentions in a string of cases which emphasized that the facts supporting the stop must be evaluated in light of the officer's training and experience. See Adams v. Williams, 407 U.S. 143, 32 L.Ed.2d 612, 92 S.Ct. 1921 (1972); United States v. Brignoni-Ponce, 422 U.S. 873, 45 L.Ed.2d 607, 95 S.Ct. 2574 (1975); United States v. Cortez, 449 U.S. 411, 66

L.Ed.2d 621, 101 S.Ct. 690 (1981). By discrediting the significance of the profile and Trooper Vogel's extensive training and experience, the decision of the Fifth District Court of Appeal directly conflicts with Royer, Brignoni-Ponce, and Cortez, supra. Compare Reid v. Georgia, 448 U.S. 438, 65 L.Ed.2d 890, 100 S.Ct. 2752, (1980), holding that conformity with certain aspects of a profile does not automatically justify an investigatory detention. The facts in Reid are less particularized than the observations of the officers in Royer, Brignoni-Ponce, Cortez and the case sub judice.

The Eleventh Circuit Court of Appeal also must shoulder the responsibility for the apparent conflict. The Fifth

District followed United States v. Smith, 799 F.2d 704 (11th Cir. 1986), which also involved a stop by Trooper Vogel based upon his drug courier profile. The state appellate court, relying heavily on Smith, agreed with the Eleventh Circuit that the profile developed by the trooper did not establish any more than an "unparticularized suspicion or 'hunch'" Coleman, supra, at 669. (A 4-5) To say that the profile followed in this case smacks of a hunch begs the question of what constitutes an articulable suspicion. Certainly the profiles examined in Royer, supra, Brignoni-Ponce, supra, and Cortez, supra, relied upon general characteristics common to those engaged

in the particular criminal activity, be it trafficking in aliens or in controlled substances. Notwithstanding these broad patterns of criminal activity inherent in the use of profiles, this Court has approved their use in developing articulable suspicion for investigation.

In Royer, supra, for example, this Court noted that the drug courier profile is an abstract of characteristics found to be typical of persons transporting illegal drugs. 460 U.S. at 493, n. 2. The facts observed by the officer which fit the profile related to Royer's youthful appearance, his luggage, his casual attire, his nervous demeanor, payment for his ticket in cash, and identification attached to

the luggage which consisted only of a name and destination. Id. The facts observed by Trooper Vogel, which fit within his drug courier profile, related to the appearance of the vehicle (a late model vehicle with Florida rental tags), the number of occupants observed in the vehicle (2), the driver's sex (male), and age (approximately 35 years old), the vehicle's direction of travel (northbound on I-95), the operation of the vehicle in an extremely cautious manner (45 miles per hour in a 55 mile per hour zone when the normal flow of traffic was 60 miles per hour), and the driver's failure to make eye contact with the trooper. Coleman, supra, at 669. (A 3; TP 18-23).

By holding that the stop of the respondents' vehicle was based on nothing more than a hunch or **unparticularized** suspicion (505 So.2d at 669), the appellate court misread or misconstrued the very nature of the profile which was approved by this Court in Florida v. Royer, supra. The specific criteria which delineate Trooper Vogel's profile can hardly be said to comprise the inarticulate hunch decried by the Court in Terry v. Ohio, supra. Accordingly, to this extent the opinion of the Fifth District Court of Appeal is in direct conflict with this Court's holding in Royer.

Generalized criminal profiles were also approved by the Court in Brignoni-Ponce, supra, and Cortez,

supra. For the benefit of the Border Patrol, this Court in Brignoni-Ponce, supra, articulated a multitude of factors which may be considered in deciding whether there is reasonable suspicion to believe that a vehicle is transporting illegal aliens. These factors included the area traveled, the driver's behavior, the type of vehicle, the number of occupants in the vehicle, and the appearance of the occupants. 422 U.S. at 884, 885. Citing Terry v. Ohio, supra, the Court emphasized that the officer in all cases is entitled to assess the facts in light of his experience in detecting illegal entry and smuggling. 422 U.S. at 885.

Although the instant case does not involve the smuggling of illegal aliens, the similarities between the general characteristics recited in Brignoni-Ponce, supra, and the profile employed by Vogel are remarkable. Given the specific facts articulated by Vogel which fell within his profile, the Fifth District's characterization of these facts as a hunch or unparticularized suspicion directly conflicts with this Court's opinion in Brignoni-Ponce, supra. See also United States v. Cortez, supra, in which this Court commended an investigatory detention which was based primarily on factors outlined in Brignoni-Ponce, supra.

Direct conflict is also presented by a decision of the New Mexico Supreme Court, State v. Cohen, 711 P.2d 3 (N.M. 1985) cert. den. 106 S.Ct. 2276 (1986). Following the stop of Cohen's vehicle for excessive speed, an officer of the New Mexico State Police detained the vehicle's occupants, who displayed characteristics consistent with a drug courier profile. The court cited the following factors which fell within the profile: 1) the occupants appeared to be foreigners; 2) the vehicle was a rental car with Florida license plates; 3) the vehicle was traveling across the country; 4) the vehicle carried a small amount of luggage; 5) the vehicle was rented one-way and the rental fee was paid for in cash. In

view of these factors, and the unusually nervous behavior demonstrated by Cohen and his passenger, the court found that the officer had reasonable suspicion to detain Cohen for further investigation. Id. at 8.

The only significant facts which do not appear in the present case are Cohen's nervousness and his apparent identity as a "foreigner". However, equally significant to Trooper Vogel were the particularized facts relating to the driving behavior of respondent Coleman and his lack of eye contact with the trooper. Perhaps to an untrained observer these facts may not be considered significant. However, as this Court has repeatedly stated, the facts must be appraised in light of the

officer's training and experience. Cortez, supra, 449 U.S. at 418. In view of the general profile characteristics observed in both cases, and the disparate opinions of the courts of the states of Florida and New Mexico, the issue concerning the use of the drug courier profile on the nation's highways deserves the immediate attention of the nation's highest court.

II.

The decision below that the vehicle stop is not supported by reasonable, articulable suspicion of criminal activity raises important and unresolved issues.

The opinion of the Fifth District Court of Appeal has effectively rendered the drug courier profile developed by Trooper Vogel useless for the purpose of investigatory detentions. During the

period of time that Trooper Vogel detained vehicles solely on the basis of his drug courier profile, the results were impressive: one-third to one-half of the vehicles stopped were transporting drugs. (TP 20-21) Further, the trooper was selective of the vehicles detained and mindful of the nature of the intrusion. On a single night the trooper usually stopped three vehicles out of approximately 400. Generally, the trooper determined in less than a minute whether or not the vehicle was transporting drugs. (TP 24-25)

In his concurring opinion in United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980), Justice Powell commended the efforts of

agents of the Drug Enforcement Agency (DEA), who relied upon a drug courier profile to stop Mendenhall in a public area of an airport. Justice Powell recognized the public's interest in detecting drug traffickers, the minimal intrusion to the respondent's privacy, and the effectiveness of DEA's drug interdiction program (which employed the drug courier profile). 446 U.S. at 565. In particular, Justice Powell emphasized the growing crisis confronting the public:

> Few problems affecting the health and welfare of our population, particularly our young, cause greater concern than the escalating use of controlled substances. Much of the drug traffic is highly organized and conducted by sophisticated criminal syndicates. The profits are enormous. And many drugs, including heroin, may be easily concealed. As a

> result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement. Id. at 561, 562.

Notwithstanding the Department's paramount concern of intercepting the flow of drugs, the success of the profile, and the minimal intrusion to the motorist, Trooper Vogel is precluded from the use of such an effective tool. The Fifth District's decision therefore, has significantly handicapped the drug enforcement program of the Florida Highway Patrol.

Moreover, the issue of the constitutionality of the use of such drug courier profile is far from settled. In United States v. Sharpe, 470 U.S. 675, 84 L.Ed.2d 605, 105 S.Ct. 1568 (1985), this Court held that the

investigatory detention of two vehicles traveling in tandem in an area frequented by drug traffickers was supported by a reasonable, articulable suspicion. Admittedly, the facts in Sharpe relating to the vehicles were more particularized than the facts observed by Trooper Vogel in the present case. The Petitioners concede that Sharpe may be distinguished from the case sub judice, but this distinction speaks in favor of granting certiorari.

This Court has not addressed the applicability of a drug courier profile, such as that employed in Royer, to the detention of a vehicle and its occupants which fit such a profile. The significance of this issue is underscored by the fact that Trooper

Vogel and the drug courier profile that he developed were featured in a national news telecast.[1] The courts, law enforcement agencies such as the Florida Highway Patrol, and the public look to this Court for guidance on the use of a drug courier profile on the nation's highways. This timely issue should be given the immediate attention of this Court.

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[1]Columbia Broadcasting System, "Sixty Minutes", April 26, 1987

CONCLUSION

Based on the record below and the authorities cited to this Court, this petition for certiorari should be granted.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

Richard B. Martell by S.H.W.

RICHARD B. MARTELL
Assistant Attorney General
4th Floor 125, N. Ridgewood Ave.
Daytona Beach, FL 32014
Counsel of Record/State of Fl.

Enoch J. Whitney

ENOCH J. WHITNEY
General Counsel,
Counsel of Record/DHSMV

R. W. Evans

R. W. EVANS
Assistant General Counsel
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, FL 32399-0504
Counsel for Petitioner

October 6, 1987

APPENDIX

Page

IN RE: Forfeiture of $6,003 in US Currency, Department of Highway Safety and Motor Vehicles v. Oswald Coleman and Jessie Williams, 505 So.2d 668 (Fla. 5th DCA 1987).....1-9

IN RE: Forfeiture of $6,003 in US Currency, Department of Highway Safety and Motor Vehicles v. Oswald Coleman and Jessie Williams, No. 70,506 (Fla. filed July 24, 1987).....10-12

Order of Circuit Court entered February 11,.....13-15

Appendix 1

In re the FORFEITURE OF $6,003.00 IN U.S. CURRENCY.

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Appellant,

v.

Oswald COLEMAN and Jessie Williams, Appellees.

No. 86-660

District Court of Appeal of Florida, Fifth District.

April 16, 1987.

Driver and passenger sought return of money seized by highway trooper and held by Department of Highway Safety. The Circuit Court, Volusia County, S. James Foxman, J., ordered Department to return money. Department appealed. The District Court of Appeal, Dauksch, J.,

held that: (1) drug courier profile was too general and unparticularized to give highway trooper reasonable suspicion that driver was committing, committed, or was about to commit crime and failed to justify investigative Terry stop, and (2) money was not contraband per se, and, thus, Department of Highway Safety was required to return it.

Affirmed.

1. **Arrest - 63.5(6)**

Drug courier profile was too general and unparticularized to give highway trooper reasonable suspicion that driver was committing, committed, or was about to commit crime and failed to justify investigative Terry stop, where profile stated pattern involving late model vehicle with Florida rental tags, two

occupants in car, male driver of approximately 35 years of age, travel on route frequently used by drug couriers, travel in evening in extremely cautious manner, and driver's failure to look as car passed patrol car. U.S.C.A. Const. Amend. 4.

2. **Drugs and Narcotics - 191**

Money that highway trooper seized from driver and passenger of car on trooper's suspicion that driver and passenger fit drug courier profile was not contraband per se and was not subject to forfeiture by Department of Highway Safety.

Enoch J. Whitney, Gen. Counsel, Dept. of Highway Safety and Motor Vehicles, and R. W. Evans, Asst. Gen. Counsel, Tallahassee, for appellant.

Paul J. Dubbeld of Judge & Warren, P.A., Daytona Beach, for appellees.

DAUKSCH, Judge.

This is an appeal from a judgment ordering the Department of Highway Safety to return to the appellees, Coleman and Williams, money seized by a highway patrol trooper.

The patrolman observed Coleman driving a car on the interstate highway and because he and Williams fit that patrolman's drug courier profile a stop was made. The patrolman testified that although Coleman had not broken any law he stopped him because in his experience persons who fit the profile sometimes carried drugs. The profile devised by the patrolman was similar to the one

discussed in United States v. Smith, 799 F.2d 704 (11th Cir.1986). The same patrolman is involved in both cases.

In this case the Department says the profile consisted of:

1) a late model vehicle;
2) Florida rental tags;
3) two occupants observed initially in the vehicle;
4) the driver appeared to be male;
5) the driver appeared to be approximately 35 years of age;
6) the vehicle was traveling northbound on Interstate 95, a route frequently used by drug couriers;
7) the vehicle was traveling in the evening in an extremely cautious manner;

8) the driver did not look at the trooper as the Appellees' vehicle passed the patrol car.

In Smith the profile was:

> The car was travelling 50 miles per hour. The car was occupied by two individuals who were approximately thirty years of age.
>
> The car displayed out of state tags. The driver appeared to be driving overly cautious and did not look in our direction as he proceeded past us. The car was traveling at 3:00 o'clock in the morning.

Id., at 706.

[1] Regarding this federal constitutional issue, the federal court has spoken by way of dictum in Smith.

The court of appeals said the profile made up by this patrolman did not establish any more than the "unparticularized suspicion or 'hunch'" condemned by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1, 27, 88 S.Ct. 1868, 1883, 20 L.Ed.2d 889, 909 (1968). Article I, Section 12 of the Florida Constitution requires all courts of this state to construe fourth amendment rights in conformity with the decisions of the United States Supreme Court. Terry allows police stops only where the officer has a reasonable suspicion that the detainee either is committing, has committed or is about to commit a crime. The drug courier profile used in this case is too general and unparticularized to support a Terry

stop, so says the federal appeals court. We agree. Perhaps over time and with more experience an adequate, particularized profile can be established to assist the state in identifying with more definiteness the illegal-drug mules on our highways. Drug courier and other criminal profiles are not per se invalid and some have been upheld. U.S. v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985); Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983); U.S. v. Cortez, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981) cert. den., 455 U.S. 923, 102 S.Ct. 1281, 71 L.Ed.2d 464 (1982).

[2] Because the money seized is not contraband per se the Department is bound to return it to the persons from whom it was taken.

AFFIRMED.

UPCHURCH, C. J., and COWART, J., concur.

Appendix 10

SUPREME COURT OF FLORIDA

Friday, July 24, 1987

CASE NO. 70,506

District Court of Appeal,

5th District - 86-660

IN RE: FORFEITURE OF $6,003.00

IN U. S. CURRENCY

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, DIVISION OF FLORIDA HIGHWAY PATROL, STATE OF FLORIDA

Petitioners,

vs.

OSWALD COLEMAN AND JESSIE WILLIAMS,

Respondents.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida

Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

OVERTON, Acting C.J., EHRLICH, SHAW, GRIMES and KOGAN, JJ., Concur

A True Copy BDM

C: Hon. Frank Habershaw
Clerk

TEST:

Hon. S. James Foxman
Judge

Sid J. White
Clerk,
Supreme Court

Hon. V. Y. Smith
Clerk

R. W. Evans,
Esquire

Appendix 12

Craig Stephen Boda,

Esquire

Paul J. Dubbeld,

Esquire

Appendix 13

IN THE CIRCUIT COURT,
SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA
COUNTY, FLORIDA.

CASE NO: 85-2931-CA-01-L

OSWALD COLEMAN,

Petitioner,

vs.

STATE OF FLORIDA, FLORIDA
HIGHWAY PATROL, etc.,

Respondents.

_____/

IN RE: FORFEITURE OF:
$6,003 in United States
Currency.

_____/

ORDER

THIS CAUSE coming on to be heard

this date upon the Petitioner's Motion to Suppress pursuant to Rule 1.100 and Rule 1.110 Florida Rules of Civil Procedure and Rule 3.190 (h) Florida Rules of Criminal Procedure, and the Court being duly advised in the premises, hereby makes the following findings:

1. That the Petitioner, OSWALD COLEMAN, has standing to contest the constitutionality of the search and seizure of the vehicle which he was operating on July 8, 1985. Dean vs. State, So.2d (Fla. 1985), Supreme Court of Florida Case No. 63,711, decided October 31, 1985; Rakas vs. Illinois, 439 U.S. 128 (1978);

2. That the initial detention in the instant case was not based upon a founded or reasonable suspicion of criminal activity as required by law. Kayes vs. State, 409 So.2d 1075 (Fla. 2d DCA 1982).

Based upon the foregoing, it is hereby,

ORDERED AND ADJUDGED that the Petitioner's Motion to Suppress evidence be, and the same is hereby granted.

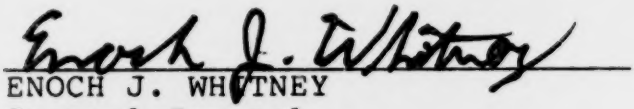
DONE AND ORDERED in chambers at Daytona Beach, Volusia County, Florida, this 11th day of February, 1986.

James S. Foxman
Circuit Judge

cc:
Craig Stephen Boda, P.A.
R. W. Evans, Esq.
Paul J. Dubbeld, Esq.

CERTIFICATE OF SERVICE

I, Enoch J. Whitney, a member of the Bar of this Court, hereby certify that on this 6th day of October, 1987, three copies of the Petition for Writ of Certiorari in the above styled case were mailed, first class prepaid, to Craig Stephen Boda, 444 Seabreeze Boulevard, Suite 760, Daytona Beach, Florida 32018 and Dan R. Warren, 315 Silver Beach, Daytona Beach, Florida 32018, counsel for all the respondents herein. I futher certify that all parties to be served have been served.



ENOCH J. WHITNEY
General Counsel
Department of Highway Safety
and Motor Vehicles
Neil Kirkman Building
Tallahassee, FL 32399-0504
Counsel for Petitioner
Telephone: 904/488-1606